

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 17757 of 1998

ORDER:

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Aggrieved by an order, dated 25.07.1997, passed in I.D.No.170 of 1994 on the file of the Labour Court-III, Hyderabad, wherein the application filed by the respondent No.2 herein to set-aside the removal orders was allowed, the State Road Transport Corporation (for short "the corporation"), preferred the present writ petition.

The facts in issue are as under:

The second respondent herein who was working as a Bus Driver in the Corporation was removed from service on the ground that he failed to attend the duties from 09.02.1991 to 28.03.1991 without obtaining prior permission or sanction of leave and also failed to attend to his normal duties from 01.04.1998 to 28.02.1991. Challenging the said removal, the second respondent/ employee preferred I.D.No.170 of 1994 before the Labour Court-III, Hyderabad. By an order, dated 25.07.1997, the said I.D. was allowed setting aside orders of removal and directed the Corporation to reinstate the second respondent into service with continuity of service with all attendant benefits but with 25% of back wages. Aggrieved by the same the present writ petition is filed by the Corporation.

Learned counsel for the petitioner/Corporation submits that the second respondent was absent for a long time as such he is not entitled for the reliefs claimed by him.

The short point that arises for consideration is whether the removal of the second respondent from service is justified?

During the course of trial in I.D.No.170 of 1994, though no oral evidence was adduced 26 documents were marked on behalf of the Corporation. Neither oral nor documentary evidence adduced on behalf of the second respondent/employee. The plea of the second respondent, for his absence

during the relevant period was explained, stating that he was absent for his duties from 19.06.1991 to 19.08.1991 as he was suffering from Asthama and took ayurvedic treatment at his native place. According to him, there was a reaction to the medicine and when he went to the R.T.C. hospital he came to know that he was suffering from T.B., as such he could not attend his duties. After getting himself cured from T.B. he joined the service. In support of his plea, he filed medical certificate (Ex.M.17) and fitness certificate (Ex.M2). The close scrutiny of the two documents would reveal that the petitioner was suffering from Asthama which was subsequently turned diagnosed as T.B.

It is not the case of the writ petitioner herein that the second respondent/employee was gainfully employed during the period of his absence or after the order of removal. In view of the above, the argument of the learned counsel for the petitioner that the second respondent/employee is not entitled for any back wages cannot be accepted, more so, in view of the judgment of the Apex Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyala and others*** wherein a three Bench judge of the Apex Court, after referring to all the judgments on the subject including the judgments of the Apex Court in ***J.K.Synthetics Ltd. V. K.P.Agrawal*** and ***Zilla Parishad, Gachiroli v. Prakash*** held as under:

- i. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
- ii. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.
- iii. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive

averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

- iv. The cases in which the Labour Court/Industrial Tribunal exercises power under [Section 11-A](#) of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.
- v. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages.

The order in I.D. came to be passed in the month of July, 1997 and pursuant thereto the second respondent was reinstated into service. Having regard to the circumstances stated above and taking into consideration the facts and circumstances of the case, I see no grounds to interfere with the order under challenge.

Accordingly, the writ petition is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

01.10.2015

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